

9-21-2012

# Fairness in Estate and Business Planning

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## Recommended Citation

Harl, Neil E. (2012) "Fairness in Estate and Business Planning," *Agricultural Law Digest*: Vol. 23 : No. 19 , Article 1.  
Available at: <http://lib.dr.iastate.edu/aglawdigest/vol23/iss19/1>

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**Agricultural Law Press**

Publisher/Editor

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# Agricultural Law Digest

Volume 23, No. 19

September 21, 2012

ISSN 1051-2780

## Fairness in Estate and Business Planning

-by Neil E. Harl\*

Farm and ranch estate and business planning involves countless choices and numerous wrenching decisions but none that ranks with pursuing fairness between and among the heirs.<sup>1</sup> In almost every situation where it is planned for the farm or ranch business to continue into the next generation,<sup>2</sup> and it is contemplated that there will be both on-farm and off-farm heirs,<sup>3</sup> the issue of fairness is paramount if one of the objectives of the parents is to assure harmony within the family after the deaths of the parents. The trend of family conflict has been clearly on the upward swing in such situations with all too many ending up in bitterness if not in litigation. The observation is heard, all too frequently, “. . . had our parents known just how much conflict within the family their decisions would generate, they would have handled it differently.”

If anything, the recent increases in farm and ranchland values have stoked the disagreements and led to more serious (and more formal) challenges to the plans left behind by the parents.

### Relationship between the parents and the on-farm heir or heirs

The issue of fairness nearly always begins with the understandings over the sharing of income from the operation with the on-farm heirs. Often, there is deliberate undercompensation for some significant time period, perhaps until the deaths of the parents. Many parents have difficulty believing that their college-educated child merits a salary or other compensation of \$50,000 per year and that may be at the low-end of what the child may be giving up to return to the farm. Moreover, the parents, growing up and beginning farming in a different era, and often without a college degree, never dreamed of a salary at that level. Often, parents will cite how they got started “on a shoestring” and little more. They may not say so but they often believe that the child joining the operation should come back at a modest wage and demonstrate their commitment to the farming operation. Besides, as they often point out, cash flow just does not permit payment of lofty salaries year in and year out.

So the first principle of fairness – *never close a year with deliberate undercompensation of anyone.*

\* Charles F. Curtiss Distinguished Professor in Agriculture and Emeritus Professor of Economics, Iowa State University; member of the Iowa Bar.

After the deaths of the parents, pleas by the on-farm heir for the sharing to tilt slightly in favor of their on-farm sibling may fall on a deaf ear with the retort that there never was undercompensation of anyone. And, in some instances, that may be correct. In any event, it is often difficult to get the off-farm heirs to see the world of compensation as the on-farm heirs see it.

The parents, seeing that the sharing of income is below what it should be, may be inclined to be more generous with the off-farm heirs. That move is hardly lost on the off-farm heirs who often do not find out about that until the parents are both out of the picture.

### Craft a choice for the off-farm heirs

At some point, and this is at the judgment of the parents, depending upon when they are ready to begin sharing ownership of the farming operation with the entire family, it is important to make it clear that the sharing will be carried out on a basis of fairness and each of the children (or grandchildren or both) will have choices on how they will be able to participate in the farming operation.

- One type of arrangement may include an opportunity for the off-farm heirs to be or become happy, cheerful and contented investors. Experience has tended to show that such a strategy is more likely to succeed if the business plan at that point is a two-entity business plan —(1) a production entity that includes only the parents and the on-farm heir or heirs and (2) a land owning entity with participation in ownership open to all family members. Owners of the entities can be assured that if they wish to cash out of their family investment, an arrangement to do so has been built into the governing documents.
- The other type of arrangement, for those off-farm heirs who, for various reasons, would prefer not to be involved in the family operation, is to provide an “exit” strategy with a commitment to purchase the interests of the heirs who prefer not to become involved in landownership, to have their

interest valued with payment to be made over a 15 to 20 year period with interest on a formula basis on the unpaid balance. Such an exit strategy should also be made available to the on-farm heirs. They should have the opportunity to make a mid-career shift if their interests and aspirations change, as well.

### Level with the entire family

The biggest single mistake parents make is to fail to share their thinking with the entire family, but particularly with the off-farm heirs. The refrain is often heard, “they never shared a thing with us kids.” Even before career choices are made or commitments made to those showing some interest in the farming operation, it is wise for the parents to begin to share their thinking, emphasizing that their core objective is to be fair to every member of the family. As time goes on, and career choices are made, the parents should continue to share their thinking, emphasizing at every turn that their guiding objective is to be fair to the children, some of whom may have gone off to college and a career off the farm, other have gone off to college and returned to the farm and others have married and drifted off to the four corners of the world.

The reward for being transparent and completely open may be long in coming but it will, in almost every situation, be warmly regarded and favorably referred to after the parents have gone to assisted living or departed from this earth. It is perhaps the most enduring legacy the parents can leave behind.

### ENDNOTES

<sup>1</sup> See generally 5 Harl, *Agricultural Law* § 41.11[1], 41.12 (2012).

<sup>2</sup> See 5 Harl, note 1 *supra*, at 41.02.

<sup>3</sup> See 5 Harl, note 1 *supra*, at 41.03[1][c] (2012).

## CASES, REGULATIONS AND STATUTES

by Robert P. Achenbach, Jr

### ANIMALS

**HORSE.** The defendants were a trust which included a farm with a horse barn, a tenant who used the barn to board horses owned by others, and the owner of a horse boarded at the barn. The horse escaped with five other horses in search of food on a neighbor's land. Another neighbor volunteered to attempt to lead the six horses back to their pasture but suffered injuries when kicked by the horse owned by one of the defendants. The plaintiff brought suit in strict liability and negligence. The trial court granted summary judgment for the horse owner and the trust. The plaintiff voluntarily dismissed the suit against the

other defendants. The court upheld summary judgment on the claim of strict liability because Ohio Code Chapter 951 imposes strict liability only for injury to the owners of the land on to which the horse escaped. Such liability does not extend to persons who do not own the property. On the claim of negligence, the appellate court reversed the trial court, holding that sufficient issues of fact remained as to whether the horse owner was negligent in failing to insure that the horse was properly supervised or fenced in. The evidence showed that the pasture was fenced only with a split rail fence, that the fence was often damaged and that the horse had often escaped. The appellate court also reversed on the issue of liability of the trust for negligence. The trial court had granted summary judgment to the trust as an out-of-possession landlord. The appellate court held that the trust remained liable for any condition on the